IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3588 of 1995
with
SPECIAL CIVIL APPLICATION No 3863 of 1995
with
SPECIAL CIVIL APPLICATION No 3864 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMANBHAI BHATIABHAI

Versus

DY EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 3588 of 1995
MR PC MASTER for Petitioner No. 1-13
MR AMIT KOTAK ASST GOVT PLEADER for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 16/02/2004

ORAL JUDGEMENT

Heard learned advocate Mr.P.C.Master on behalf of the petitioners workmen and learned AGP Mr.Amit Kotak for respondent - Authority.

In all three petitions, the petitioners workmen have challenged the common award passed by the labour court, Surat in Reference No.652 / 87 with Nos.654 to 666/87 and No.680 / 1987 dated 15th October, 1994, whereby the reference has been rejected but with suggestion to the respondent that as and when the work is available, the respondents may give first preference to these workmen.

Initially, this Court has issued notice on 5th May, 1995, returnable on 26th June, 195. Thereafter, the matter has been adjourned to 18thJuly, 1995. On 18th July, 1995, this Court [Coram : Y.B.Bhatt, J.] has passed the following order.

"Learned counsel for the petitioners states that he does not challenge the award at Annexure-B hereto. Leave granted to delete the relevant prayer. Rule. Mr.B.D.Desai, learned AGP waives service of Rule on behalf of the respondents. Interim relief is refused. In view of the fact that appropriate directions have already been issued to the concerned respondents under the award in question which binding on the concerned respondents."

Therefore, in all three petitions, the challenge by the workmen about illegal termination for non compliance of Section 25-F has not survived and does not remain under challenge as the learned advocate Mr.Master has deleted the prayer as per his statement made before this Court on 18th July, 1995. It requires to be appreciated that the labour court in terms has come to the conclusion that none of the workmen has completed 240 days continuous service within a period of one year and their services have not satisfied the condition under Section 25[b] of the I.D.Act, 1947 and therefore, there is no breach of Section 25-F committed by the respondents at the time of termination and ultimately, the reference has been rejected. Therefore, this part does not remain under challenge as per the statement made by the learned advocate Mr.P.C.Master. It is also relevant to note that according to definition of Section 2[oo] of the I.D.Act, 1947, the retrenchment means any kind of termination except it falls within exceptions provided under the Section. It is not necessary that unless the workmen

completed 240 days continuous service, then only, the workman becomes entitled to get benefit of mandatory provisions of Section 25-H of the I.D.Act, 1947. The law on this point is very well settled that irrespective of the fact that whether the workman has completed 240 days continuous service or not, but if his termination comes within definition of retrenchment not falls within four exceptions, it should be considered as retrenchment and in that case, Section 25-H will apply. This aspect was very well in the mind of the labour court at the time of passing of the award in question. Therefore, the labour court has suggested to the respondents keeping in mind the object of Section 25-H that as and when necessity of work arises, or, any new project is undertaken, priority must be given to these workmen before engaging any other employee as daily wager. Learned advcoate Mr.P.C.Master has submitted that the workmen received one letter dated 6th march, 1999 from the Deputy Executive Engineer, Keliya Project Head Works [which is taken on record] wherein offer has been made to these workmen that now necessity of the workmen has arisen and they require more than 50 daily wagers and ultimately, there is possibility of regularisation of their service. The Deputy Executive Engineer has vide said letter has sought for a response from the workmen. According to the learned advocate Mr.P.C.Master, in response to the said letter, on 17th May, 1999 each workman have given in writing that without prejudice to their rights and contentions in the petition pending before this Court, they are prepared to join as the daily wager as and where they may be employed. Therefore, it is clear that the workmen have already communicated their willingness to the Deputy Ex. Engineer on 17th May, 1999. A xerox copy of one such letter shown to this Court, is taken on record but despite this, the workmen have remained without job though it is a suggestion of the labour court on 15th October, 1994. Learned advocate Mr.Master has submitted that from 1994 till date, number of projects have started by the Deputy Executive Engineer or the respondents but no chance has been given to the workmen by the respondent and therefore, the request before this Court that some suitable directions may be issued on the respondents to follow the mandatory provisions of Section 25-H as and when the daily wagers are required by the respondents.

Learned AGP Mr.Amit Kotak has submitted that now onwards if any occasion arises to engage any daily wager, the respondents will give priority to these workmen and accordingly, they will give in writing in advance to the workmen if the workmen are ready and prepared to report on work.

In light of the submissions made by the learned advocates, it is relevant to refer the Section 25-H, which reads as under :

"25-H Re-employment of retrenched workmen :

Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for reemployment and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons."

This is a mandatory provision and therefore, it is the duty and legal obligation on the part of the respondents that if any workman retrenched and the employer proposes to take into his employ any person, they should give opportunity to such retrenched employees and workers who offer themselves for re-employment shall have preference over other persons. Section 25-H is different cause of action and having no relation with completion of 240 days continues service. It is altogether independent Section having independent legal right created in favour of the workmen. This aspect has been examined by the Apex Court Court in case of CENTRAL BANK OF INDIA VS. S.SATYAM reported in JT 1996 [7] SC 181.

Therefore, considering the entire matter and the letter of the Deputy Executive Engineer dated 6th March, 1999, it is considered to just and proper to issue some suitable directions on the respondents to reemploy these workmen as and when the work requires or necessity arise, to give first priority before engaging any other new employee, which would meet with the ends of justice between the parties.

In view of above discussion, the respondents are directed that now onwards if any work is pending with the respondents where additional daily rated employees are required or any future new project / work or existing work, whenever the daily rated workers are required by the respondents, they shall give first priority to the petitioners herein while intimating them in writing seeking their willingness to report on work and the workmen concerned are ready and prepared to report on work, they shall be given first priority to employ on

such work site and so long the work remain, they shall be made continued in service. The respondents are also directed not to engage any other workman except first engaging the workmen herein which, in my opinion, would also satisfy the requirement of Section 25-H of the I.D. Act, 1947 and would meet the ends of justice between the parties.

It is also made clear that so long the work is available with the respondents, no artificial break shall be given to any of the workmen herein.

In view of above observations and directions, all three petitions are disposed of accordingly.

Rule, in each petition, stands discharged. Interim relief, if any, stands vacated. No order as to costs.

Date : 16.2.2004 [H.K.Rathod, J.]

#kailash, PS#